IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 724

THE STATE OF TEXAS
Petitioner,

v.

RECONSTRUCTION FINANCE CORPORATION
AND FEDERAL FACILITIES CORPORATION
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY TO BRIEF FOR THE RESPONDENTS IN OPPOSITION

Respondents in their brief in opposition, in footnote 5 at page 6 states:

"Petitioner makes no attempt to explain or amplify its statement (Pet. 9) that the *Jones* [1] decision was overruled by *Kubena v. Hatch*, 144 Tex. 627, 193 S.W. 2d 175, a case which makes no mention of the *Jones* case and which, as we read it, has no conceivable bearing on the issues here."

Petitioner stated on page 9 of its petition:

"The Supreme Court of Texas in a unanimous opinion, subsequent to the *Jones* case, held that the penalties and interest provided for in delinquent ad valorem taxes were included in the word 'taxes.' We refer to *Kubena, et al v. Hatch, et al.*, 144 Tex. 627, 193 S.W. 2d 175 (1946)."

We will amplify the above statement and in connection therewith demonstrate that the opinion of the court in the *Jones* case was limited to the question of whether interest was in the nature of a penalty as used in the Texas constitutional provision [2] which prohibits the Legislature from "remitting fines, *penalties* and forfeitures by special law."

Case of Kubena v. Hatch (1946)

Section 50 of Article 16 of the Texas Constitution provides, in part:

"The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts except for . . . the *taxes* due thereon. . . ."

[1] Jones v. Williams, 121 Tex. 94, 45 S.W. 2d 130.
[2] Section 56 of Article 3, Texas Constitution.

Hatch allowed taxes against his homestead to become delinquent. The State brought suit and foreclosed its lien as to the taxes, penalties, interest and poll taxes assessesd against Hatch and his wife and the homestead was subjected to *forced sale.* Kubena bought the homestead at the foreclosure sale. In this case Hatch attacked the judgment of foreclosure and sale on the ground that his homestead was protected from forced sale for debts other than the *taxes* due thereon. The Texas Supreme Court held that the judgment was valid as to the foreclosure of the *taxes,* penalties and interest assessed against the homestead; that the portion of the judgment foreclosing a lien for the poll taxes was void. The court stated that "All of the demand involved in the foreclosure suit except the poll taxes was for *taxes, interest, penalties* and costs, legally chargeable against the homestead." The court then used the following significant language:

> " . . . and to enforce the payment of these *taxes* [referring back to *taxes, interest, penalties* and costs] the taxing units held a valid lien under both the *Constitution* and statutes of this State."

Case of Jones v. Williams (1931)

The Supreme Court of Texas in the first paragraph of its opinion in the *Jones* case stated that "the only question involved is the constitutionality of

Chapter 18, Acts of the Second Called Session of the Forty-Second Legislature."

Chapter 18 became effective September 30, 1931, and released the interest and penalties on delinquent ad valorem taxes if paid before January 31, 1932. The court in the *Jones* case held the Act constitutional on the grounds that the Legislature had the authority to release penalties by *general* law; that interest was in the nature of a penalty as used in Section 56 of Article 3 of the Texas Constitution. It also held that interest and penalties were not a part of the taxes so as to constitute an "indebtedness, liability or obligation of any corporation or individual, to this State" as used in Section 55 of Article 3 of the Texas Constitution which forbids the Legislature from releasing an indebtedness, liability or obligation due the State. At the time the Texas Supreme Court wrote the *Hatch* opinion (1946), this Act releasing interest and penalties had expired by its own terms in 1932.

Furthermore, the labored opinion in the *Jones* case was an economic necessity occasioned by the world-wide depression. This Act releasing interest and penalties contained the following preamble:

> "WHEREAS, the State and its subdivisions are in immediate need of money to meet the largest deficit we have ever faced heretofore; and
>
> "WHEREAS, the world-wide economic crisis has brought about a calamitous condition, espe-

cially affecting agriculture, which renders it impossible for vast numbers of people of Texas to pay their taxes if forced in addition to pay the penalties and interest hereinabove specified; and

"WHEREAS, such condition constitutes a calamity as the same is defined in the Constitution; and

"WHEREAS, it is hereby declared to be the legislative intent that such condition does constitute a public calamity; and

"WHEREAS, such calamity as aforesaid become so serious as to wreck our whole economic and financial existence as a State Government, it being now apparent that more than fifty per cent (50%) of the total amount of State ad valorem taxes will probably not be paid this year; therefore, . . ."

Under the express holding of the Texas Supreme Court in the recent *Hatch* case (1946), it cannot be doubted that under the Texas rule, the interest and penalties do constitute a part of the taxes. It is equally clear that in Texas all delinquent taxes are subject to interest and penalties and that under both the Texas Constitution and Statutes that the State has a lien for the interest and penalties as well as for the taxes. This constitutes the Texas Substantive Law.

Petitioner pointed out in its petition (Pet. 12) the importance of the question involved and stated that if the lower court's opinion is allowed to stand that various governmental agencies will feel free to choose

their own taxpaying date and that a multiplicity of suits will follow pending a final determination of the question presented. The only answer Respondent makes (R. B. 11) is that there is a strong presumption that the Federal Agencies will obey the law and pay their taxes before delinquency. We submit that a stronger presumption exists that federal agencies such as national banks who are in the business of lending money, as well as individuals, will not pay their taxes before delinquency if, by permitting them to become delinquent, they can save or make money. There is no reason to assume that Congress intended that a presumption, salutary though it may be in a proper case when properly applied, be substituted as a valid reason for respondent's failure to pay these taxes before delinquency or to relieve it from interest and penalty imposed by State law if the taxes are permitted to become delinquent. School districts throughout the United States lean heavily upon ad valorem real estate taxes for support. The presumption which respondent urges would be of no comfort to a school district if it became hardpressed to meet its fiscal obligations because of the failure of a governmental agency such as R. F. C. or national banks to timely pay the taxes lawfully assessed against them and their property.

Conclusion

We respectfully submit that Congress did not intend in allowing the real property of its agencies to be taxed "to the same extent . . . as other real prop-

erty is taxed" to permit such agencies to choose their own taxpaying date.

It is respectfully submitted that the petition for writ of certiorari should be granted.

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